REMARKS

As may be appreciated from the above listing of claims, the claims have been amended herein. Support for the amendments to the claims made herein may be found at least at pages 10-11 of the Specification. Authorization is also provided herewith to pay any underpayment of fees or credit any overpayment of fees to Deposit Account No. 02-4800.

In page 2 of the Office Action of December 22, 2010, the Examiner provided comments regarding the pending claims. Applicants thank the Examiner for those comments. It is believed that these comments helped expedite examination of this application.

I.   INTERVIEW SUMMARY FOR INTERVIEW OF MARCH 16, 2011

On March 16, 2011 the undersigned spoke with the Examiner to discuss comments made in the Office Action relating to a need for narrowing amendments to be made. The undersigned and the Examiner spoke about possible amendments to the claims, but no conclusive or final determination relating to the allow ability of any claims were made in the interview. The undersigned would like to thank the Examiner for his guidance as it relates to his interpretation of the pending claims. It is believed that the interview helped expedite the examination of this application.

II.   RESPONSE TO REJECTION OF CLAIMS UNDER 35 U.S.C. § 103

Claims 9-11, 13-16 and 18-25 and 27-33 were rejected as obvious in view of U.S. patent No. 7,062,480 to Fay et al. and U.S. Patent Application Publication No. 2003/0072271 to Simmons et al. in the Office Action of December 22, 2010 (hereafter "Office Action"). (Office Action at 3-6 and 8-10).

Claim 12 was rejected in view of Fay et al., Simmons et al. and U.S. Patent Application Publication No. 2002/0016964 to Aratani et al. (Office Action, at 6). In the Office Action, he Examiner identifies a Chen reference that includes a U.S. published patent application number, 2002/016964 as being this reference. However, Applicants were unable to locate such a reference with this publication number. It is believed the Examiner made a typographical error with respect to the identification of this reference in the Office Action and intended to refer to the Aratani et al. reference.

Claims 20 and 26 were rejected as obvious in view of Fay et al., Simmons et al., and U.S. Patent Application Publication No. 2004/0111492 to Nakahara. (Office Action, at 7).

Claims 30-33 were rejected as being unpatentable in view of Simmons, Fay et al. (Office Action, at 8-10).

A. **Burden Of Proving Obviousness Under 35 U.S.C. § 103**

"All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2143.03 (emphasis added). "When evaluating claims for obviousness under 35 U.S.C. 103, **all the limitations of the claims must be considered and given weight**." MPEP § 2143.03. "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." *Id.* "A 35 U.S.C. 103 rejection is based on 35 U.S.C. 102(a), 102(b), 102(e), etc. depending on the type of prior art reference used and its publication or issue date." MPEP § 2141.01.

To establish a *prima facie* case of obviousness, an Examiner must show that an invention would have been obvious to a person of ordinary skill in the art at the time of the invention. MPEP § 2141. "Obviousness is a question of law based on underlying factual inquiries." *Id.*

The factual inquiries enunciated by the Court include "ascertaining the differences between the claimed invention and the prior art" and "resolving the level of ordinary skill in the pertinent art." MPEP § 2141.

"A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references." MPEP § 2143.01. "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, **there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.**" MPEP § 2143.01 (citing *KSR*, 82 USPQ2d at 1396) (emphasis added).

For instance, an invention that permits the omission of necessary features and a retention of their function is an indicia of nonobviousness. *In re Edge,* 359 F.2d 896, 149 U.S.P.Q. 556 (CCPA 1966); MPEP 2144.04. A conclusory statement to the contrary is insufficient to rebut such an indicia of nonobviousness. *See* MPEP § 2143.01.

Moreover, "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious." MPEP § 2143.01. Also, "the proposed modification cannot render the prior art unsatisfactory for its intended purpose." MPEP § 2143.01.

B.   Claims 9-15 And Claims 19-23 Are Not Rendered Obvious By The Cited Art

Claim 9 requires a method for verifying an availability of a server to include checking for a receipt of a message regarding a transmission of a server keepalive test by a first client within a first predetermined period of time. If no message from the server regarding the transmission of the keepalive test is received by the first client within the first predetermined period of time, the first client transmits a message regarding a collective request to a plurality of predefineable other clients. A message regarding an availability of the server by a first client to a plurality of predefinable other clients may then be transmitted. The transmission of any availability request by the predefinable other clients to the server for at least a prescribable period of time may also be prevented. Claims 10-15 and 19-23 depend directly or indirectly from claim 9 and, therefore, also contain these limitations.

None of the cited art teaches or suggests all of the limitations of claims 9-15 or 19-23. For example, none of the cited art teaches or suggests any first client that transmits a message regarding a collective request to a plurality of other clients and then transmits a message to the clients that responded to such a message regarding an availability of a server. Further, none of the cited art teaches or suggests the preventing of the other clients from sending any availability request to the server as required by claims 9-15 and 19-23.

The Examiner correctly acknowledges that Fay et al. do not teach or suggest any preventing of sending availability request messages for a prescribable period of time by clients that received and responded to a collective request from another client. (Office Action, at 3). Simmons et al. also fail to teach or suggest such a limitation. Paragraph 9 of Simmons et al, which is cited in the Office Action, merely discloses a buffer that provides a delay for the

sending of messages in a network. There is no preventing of clients that received a collective

request from another client for sending messages to a server for any prescribable time period.

In fact, the delay created by the buffer disclosed by Simmons et al. does not do any

preventing of sending messages to a server. To the contrary, the buffer merely delays the

sending of messages to any device that is intended to receive that message. The buffer acts as an

intermediary to slow the speed in which a device may receive a message, it does not prevent a

transmission.

Further, as indicated at page 3 of the Office Action, the cited art does not teach or suggest

any first client that sends a message regarding a collective request to a plurality of predefineable

other clients if no response from a keepalive message is received from a server within a given

time period. None of the cited art teaches or suggests such a limitation.

Alone or in any combination, none of the cited art that is actually prior art to the pending

claims teaches or suggests all the limitations of claims 9-15 and 19-23.

C.   **Claims 16, 18 And 24-29 Are Allowable**

Claim 16 requires a control program loaded into a RAM of a client to have code that

causes the client to check for a receipt of a message regarding a transmission of a server

keepalive test by a first client within a first predetermined period of time. If no message from

the server regarding the transmission of the keepalive test is received by the client within the first

predetermined period of time, the client transmits a message regarding a collective request to a

plurality of predefineable other clients. The code also includes a code portion that causes the

client to transmit a message regarding an availability of the server to a plurality of other clients.

This message is configured to prevent transmission of availability requests by predefinable other clients to the server for a predefinable period of time.

Claim 18 requires a client to include a device configured to cause the client to check for a receipt of a message regarding a transmission of a server keepalive test by a first client within a first predetermined period of time. If no message from the server regarding the transmission of the keepalive test is received by the client within the first predetermined period of time, the client transmits a message regarding a collective request to a plurality of predefineable other clients. Another device is configured to transmit a message regarding an availability of the server to a plurality of predefinable other clients. This message is configured to prevent a transmission of an availability request by any of the predefinable other clients to the server for a predefinable period of time if the confirmation message responding to the availability request is received by the client. Claims 24-29 depend directly or indirectly from claim 18 and also include these limitations.

As noted above, the combination of Fay et al. and Simmons et al. is not able to render the pending claims obvious. Alone or in any combination, none of the cited art that is actually prior art to the pending claims teaches or suggests all the limitations of claims 18 and 24-29. For example, none of the cited art teaches or suggests any first client that transmits a message regarding a collective request to a plurality of other clients and then transmits a message to the clients that responded to such a message regarding an availability of a server. Further, none of the cited art teaches or suggests the preventing of the other clients from sending any availability request to the server as required by claims 16, 18 and 24-29.

D. Claims 30-33 Are Allowable

Claim 30 is directed to a method for verifying an availability of a server. The method includes checking for a receipt of a message regarding a transmission of a server keepalive test by a first client within a first predetermined period of time. If no message regarding the transmission of the keepalive test is received by the first client within the first predetermined period of time, the first client transmits a message regarding a collective request to a plurality of predefineable other clients. The first client also transmits an availability request to the server. The availability request sent to the server comprises data of the predefineable other clients that responded to the message regarding the collective requests within a second predetermined period of time. The transmission of any availability requests by the plurality of predefinable other clients to the server is also prevented for at least a prescribable period of time. After a third predetermined period of time or after receipt of a response to the availability request sent to the server, the first client transmitting a message regarding an availability of the server to the predefinable other clients that responded to the message regarding the collective requests within the second predetermined period of time. Claims 31-33 depend directly or indirectly from claim 30 and, therefore, also contain these limitations.

None of the cited prior art teaches or suggest the limitations of claims 30-33. For instance, Fay et al. do not teach or suggest any client that send any availability request to a server that comprises data of predefineable other clients that responded to a message regarding collective requests within a predetermined period of time. As another example, none of the cited art teaches or suggests any transmitting of a message from such a first client to the clients that responded to such a message regarding an availability of a server. Further, none of the cited

art teaches or suggests the preventing of the other clients from sending any availability request to

the server as required by claims 30-33.

1.   Claim 33 Is Independently Allowable

Claim 33 depends from claim 30 and requires the preventing of the transmission of any

availability requests by the plurality of predefinable other clients to the server for at least a

prescribable period of time to include the predefineable other clients that responded to the

message regarding the collective request within the second predetermined period of time

checking whether the message regarding an availability of the server is received from the first

client within a fourth predetermined period of time. None of the cited art teaches or suggests any

checking by clients with a first client to determine whether the message regarding an availability

of the server has been received within a time period as required by claim 33.

For example, Column 6, lines 15-17 of Fay et al. is merely directed to a cache that is used

to reduce a total number of requests that must be handled by a particular device. There is no

checking of any message from another device taught by Fay et al. as required by claim 33.

Claim 33 is allowable over the cited art.

E.   Granted European Patent No. EP 1 668 866 Is An Indicia Of Nonobviousness

EP 1 668 866 is a European patent that is related to the present application. The

European Patent Office reviewed the prior art and found that the application submitted by

applicant warranted patent protection and granted a patent to the assignee of the present

application that contained claims having a similar scope to the claims presented herein. A copy

of this patent was provided to the Examiner with the Amendment dated July 8, 2009.

For at least the above discussed reasons, the pending claims are not rendered obvious by the cited art. Reconsideration and allowance of these claims is respectfully requested.

III.   CONCLUSION

For at least the above reasons, reconsideration and allowance of all pending claims is respectfully requested.

Respectfully submitted,

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